IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-02745-RPM

UNITED STATES OF AMERICA and
THE STATE OF COLORADO,

Plaintiffs,

LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT and **THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO,**

Intervenor Plaintiffs,

v.

CITY OF COLORADO SPRINGS, COLORADO,

Defendant.

DEFENDANT'S MOTION FOR SANCTIONS AGAINST THE STATE OF COLORADO FOR DESTRUCTION OF DOCUMENTS

The City of Colorado Springs, Colorado (the "City") submits the following Motion for Sanctions against the State of Colorado for Destruction of Documents. In support, the City states as follows:

I. INTRODUCTION

The State of Colorado ("Colorado" or the "State") established the Colorado Department of Public Health and Environment ("CDPHE") to regulate and enforce water quality matters, including the City's State-issued Municipal Separate Storm Sewer System permit ("MS4 permit"). Over the life of this MS4 permit, extending back to 1997 and before, the CDPHE adopted a policy to destroy enforcement-relevant, internal communications and related

documents.

That agency is now prosecuting this enforcement action against the City. Those destroyed documents are important. The heart of the City's defense is that actions Plaintiffs now complain of were understood in detail and approved by the CDPHE in the past. These documents would have proved part of the City's defense. But the State has destroyed that evidence. The City asks that the State be sanctioned accordingly.

Facts

The State of Colorado is the administrator of the City's State-issued MS4 permit. Amended Complaint [Doc. 21-1] ¶ 32. Key issues in the first segment of trial concern the State's understanding and approval of several aspects of the City's MS4 permit stormwater programs.

Two of the three exemplar sites are involved in this motion. For Indigo Ranch North at Stetson Ridge Filings Nos. 11, 13 and 14 ("Indigo Ranch"), the Plaintiffs challenge the City's application to single-family home developments of a "residential waiver" for permanent stormwater quality controls, as well as the City's "drainage letter" rule that grandfathers previous stormwater approvals for subsequent subdivision filings. Am. Compl., Fourth Claim for Relief, ¶¶ 118-143. The City will show that the State knew and approved the City's application of the residential waiver, and also knew and approved of the City's drainage letter rule.

With respect to Star Ranch Filing No. 2 ("Star Ranch"), the State contends that the City's compliance-oriented design review and enforcement program for construction sites is inadequate. Am. Compl., Eighth, Ninth, and Tenth Claims for Relief, ¶¶ 203-255. In response, the City will show that the State understood in detail and accepted the City's design review and enforcement programs for construction sites.

Through discovery, however, the City has learned that the State routinely destroyed its internal and external communications at the time of these approvals and other actions. This is information that would have supported the City's defenses of State knowledge, understanding, and acceptance. In particular, the State destroyed information concerning (i) several extensive inspections and audits of the City's MS4 permit over the years that led to the Amended Complaint; (ii) the State's approval of the City's 2010 Subdivision Policy Manual, which is central to the residential waiver issue; and (iii) communications within the State about the compliance-oriented nature of the City's construction sites program and enforcement at Star Ranch. The City's multiple requests to the State for these records have been met with the response that the State was under no duty to retain those communications. But to allow the State to pursue an enforcement action against the City on these issues, while depriving it access to important communications, is prejudicial and fundamentally unfair and should not be permitted by this Court.

Certificate of Compliance with D.C.Colo.LCivR. 7.1(a)

In accordance with D.C.Colo.LCivR. 7.1(a) and Paragraph 42 of the Order and Stipulation Regarding Discovery Procedure [Doc. 35, 36], counsel for the City has conferred with counsel for the State and other Plaintiffs. Plaintiffs oppose the relief sought in this motion.

Counsel for the City took the following actions before filing this motion. Following a series of informal communications among the parties, on September 7, 2017, the City wrote to the State asking for the missing State internal communications, notes, and similar documents. Letter from R. Kaufman to M. Parish dated September 7, 2017, attached as Exhibit 1.[1] The City

[1] The City previously sent letters to the State on August 14 and August 22, 2017. The State sent a brief response letter on August 24, 2017, and then by email on August 28, 2017 asked the City to

sought information about the State's (i) email and document retention policies and (ii) procedures for its litigation hold in this matter. *Id.*

The State's response on October 6, 2017 conveyed two points: (i) the State issued its litigation hold on June 18, 2015,[2] but (ii) for non-published draft documents or internal communications dated prior to June 18, 2015, the CDPHE had destroyed those documents pursuant to CDPHE Policy 2.15, State Archives and Public Records Act, and applicable State Archives Schedules. Ex. 2 at pp. 3-7, 10-12. To the City's knowledge, there is no factual dispute that the State destroyed those documents.

The City formally requested all such records in its Requests for Documents Nos. 1, 3- 4, 6, 9, and 12-16, attached as Exhibit 3.[3] The State produced only one relevant document in response. *Id.*

Separately, on December 1, 2017 the State filed a *Notice of Failure to Preserve Documents* [Doc. 71], in which Nathan Moore, the Compliance Unit Manager for the CDPHE, admitted that he failed to retain emails and notes for a period of time after the State issued its litigation hold in June 2015. The document destruction underlying this particular notice is not at

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pose its questions more formally in writing. That request resulted in the City's September 7, 2017 letter.

[2] The State claims that it first issued an "informal" litigation hold on June 10, 2015, when counsel for the State "sent a small number of known custodians a short email instructing them that [counsel] was planning on issuing a formal litigation hold in the next week for all documents and information relating to anticipated litigation against the City of Colorado Springs for violations of Permit No. COS-000004," but the "formal" litigation hold was not issued until June 18, 2015, "because doing so is a more complex process that required the review of other attorneys." Letter from M. Parish to R. Kaufman and A. Gilbert dated October 6, 2017, attached as Exhibit 2, at p. 7.

[3] Because the State's responses to the City's Requests for Documents included the full text of the original requests, only the State's responses are included as an exhibit so as to avoid unnecessary duplication of exhibits.

issue in this motion. But the State did not address in that notice its destruction of emails, notes and other records before the State's litigation hold.

On December 11, 2017, the City deposed the State's 30(b)(6) representative, Ms. Ann Hause, to obtain facts about the State's document retention and destruction policies. Ms. Hause's testimony repeated the State's position that the State could destroy internal communications before its litigation hold was issued, even if that information was central to this later enforcement action brought by the State. Deposition Transcript Excerpts of Ann Hause, attached as Exhibit 4, at 16:16-18:8, 32:1-4, 42:6-43:2, and 45:15-23.

II. STANDARD OF REVIEW

A sanction for destruction of documents "is proper where: '(1) a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent, and (2) the adverse party was prejudiced by the destruction of the evidence.'" *Jones v. Norton*, 809 F.3d 564, 580 (10th Cir. 2015) (quoting *Turner v. Pub. Serv. Co. of Colorado*, 563 F.3d 1136, 1149 (10th Cir. 2009)); *see also* Fed. R. Civ. P. 37(e). "A moving party has the burden of proving, by a preponderance of the evidence, that the opposing party failed to preserve evidence or destroyed it." *Zbylski v. Douglas Cty. Sch. Dist.*, 154 F. Supp. 3d 1146, 1160 (D. Colo. 2015) (citing *Ernest v. Lockheed Martin Corp*, No. 07-cv-02038, 2008 WL 2945608, at *1 (D. Colo. July 28, 2008)).

In deciding whether to sanction a party for the destruction of evidence, courts have considered a variety of factors, but two "generally carry the most weight: (1) the degree of culpability of the party who lost or destroyed the evidence; and (2) the degree of actual prejudice to the other party." *Mueller v. Swift*, No. 15-CV-1974, 2017 WL 3058027, at *2-3 (D. Colo. July 19, 2017) (quoting *Browder v. City of Albuquerque*, 209 F. Supp. 3d 1236, 1244 (D. N.M. 2016)).

III. ARGUMENT

There is no dispute in this case that the State destroyed records the City asserts are important to the defense. Rather, the question presented here is the extent of the State's duty—as an enforcement agency—to retain its records of its own actions that are important to any later enforcement actions it brings. The records destroyed here explain the State's historic approvals and understandings of the actions the State now is trying to enforce. The City will argue at trial that those approvals and understandings belie the claims the State and other Plaintiffs make in this case. As a result, the records destroyed here are obviously important to the City as an enforcement defendant, and their loss is prejudicial.

A. The State Was Under a Duty to Preserve Relevant Internal Communications and Notes Prior to its Litigation Hold.

i. Common Law Duty

At common law, "a party has a duty to preserve evidence because it knew, or should have known, that litigation was imminent." *Turner*, 563 F.3d at 1149. "Courts in this District have found that putative litigants had a duty to preserve documents once a party has notice that the evidence is relevant to litigation or when a party knew or should have known that the evidence may be relevant to future litigation." *Zbylski*, 154 F. Supp. 3d at 1162-63 (citing *Cache La Poudre Feeds v. Land O'Lakes, Inc.*, 244 F.R.D. 614, 620 (D. Colo. 2007) and *Asher Assocs., LLC. v. Baker Hughes Oilfield Operations, Inc.*, No. 07-cv-01379, 2009 WL 1328483 (D. Colo. May 12, 2009)); *see also, e.g., Montoya v. Newman*, 12-cv-02362, 2015 WL 4095512, at *4-6 (D. Colo. July 7, 2015) (notice of intent to sue pursuant to Colorado Government Immunity Act triggered duty to preserve).

While "the duty to preserve evidence is often triggered by the filing of a lawsuit . . ., this duty may arise earlier if a party 'knows or should have known' that the material may be relevant to future litigation.'" *Zbylski*, 154 F. Supp. 3d at 1162-63 (quoting *Oto Software, Inc. v. Highwall Tech., LLC*, 2010 WL 3842434, at *7 (D. Colo. Aug. 6, 2010)). "In determining whether a party's duty to preserve has been triggered, courts evaluate facts such as the likelihood that a certain kind of incident will result in litigation; the knowledge of certain employees about threatened litigation based on their participation in the dispute; or notification received from a potential adversary." *Id.* (citation omitted).

Here, the State is embodied by the CDPHE, an enforcement agency that caused the State to sue the City for alleged violations of its MS4 stormwater permit, which in turn is a product of the State acting in a regulatory capacity. Acting as a regulator even earlier than 1997, when the State issued its first MS4 permit to the City, the State undertook several actions that were of the kind that are reasonably foreseeable as resulting in enforcement litigation, including extensive audits of the City's MS4 permit in 2004, 2009, 2013, and 2015, and approvals of the City's stormwater programs, such as the residential waiver, Drainage Criteria Manual, Subdivision Policy Manual, and others. *Id.* ¶¶ 32-42.

The State claims the primary purpose of its audits and inspections was to ensure "compliance," and, presumably, not for enforcement. But it is common sense that a finding of noncompliance would result in enforcement (which is exactly what transpired here).

As one example, the State commented upon the Environmental Protection Agency's "Colorado Springs MS4 Audit Report" in 2004. These comments include a section that specifically addresses "Construction Sites Inspection *and Enforcement*." Correspondence from N. Moore to L. Hanley dated October 29, 2004, attached as Exhibit 5, at p. 2 (emphasis added).

In regulating an MS4 stormwater permit, "enforcement" may include the State alleging violations of the Colorado Water Quality Control Act, which is exactly what the State has alleged here. That demonstrates that, as early as 2004, by engaging in regulatory and "enforcement" actions related to the City's MS4 permit, the State knew or should have known that its records would be important to future enforcement litigation sufficient to trigger a duty to preserve.

ii. Statutory Duty

A statute or regulation may also serve as a source of a party's duty to preserve. *See, e.g., Zbylski*, 154 F. Supp. 3d at 1168 ("This regulation can create a duty to preserve.") (citing *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1419 (10th Cir. 1987) for the court's conclusion that defendants violation of 29 C.F.R. § 1602.40 entitled plaintiff to "the benefit of a presumption that the destroyed documents would have bolstered her case")); *see also Favors v. Fisher,* 13 F.3d 1235, 1239 (8th Cir. 1994) (because employer violated record retention regulation, plaintiff "was entitled to the benefit of a presumption that the destroyed documents would have bolstered her case"); *Hicks,* 833 F.2d at 1419 (same); *Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 108-09 (2d Cir. 2001) ("We agree that, under some circumstances, such a regulation can create the requisite obligation to retain records, even if litigation involving the records is not reasonably foreseeable.").

Here, the State was under a duty to preserve relevant documents and correspondence pursuant to two sections of the Colorado State Archives and Public Records Act, C.R.S. § 24-80-101 *et seq*. First, a general duty to preserve arises under C.R.S. § 80-20-106, which states that "[t]he department of personnel and every other custodian of records shall carefully protect and preserve them from deterioration, mutilation, loss, or destruction and, whenever advisable, shall

cause them to be properly repaired and renovated." Second, C.R.S. § 24-80-102.7 provides that "(2) [e]ach state agency shall: (a) [e]stablish and maintain a records management program for the state agency and document the policies and procedures of such program. The state agency shall ensure that such program satisfies the administrative and technical procedures for records maintenance and management established by the state archivist pursuant to section 24-80-102(12)." S*ee also Zbylski*, 154 F. Supp. 3d at 1168 (recognizing that this provision provides a basis for a statutory preservation duty for a state agency); Ex. 2 at p. 4.

In addition, under State Archives Records Disposition Schedule No. 07-41, which the State admits is applicable here (Ex. 4 at 63:23 - 64:1; Ex. 2 at pp. 4-6), CDPHE Water Quality Control Division is required to, among other things, retain a record copy of "internal correspondence such as emails, memos, notes" "until closure of the case then destroy," and duplicates "until no longer needed then destroy." State Archives Records Disposition Schedule No. 07-41, attached as Exhibit 6. Therefore, under this schedule alone, the State was under a statutory duty to preserve its records important later in this case.

iii. *Constitutional Duty*

The State is also under a state constitutional duty to preserve relevant enforcement evidence under the Due Process clause of the Colorado Constitution. COLO. CONST. art. II, § 25 ("No person shall be deprived of life, liberty or property, without due process of law."). Where a government agency acts with enforcement power such that it can deprive another of a protected interest, due process requires that the process be fundamentally fair. *See generally Katzson Bros. v. U.S. E.P.A.*, 839 F.2d 1396, 1399 (10th Cir. 1988) (noting that "agencies are free to fashion their own rules of procedure, so long as these rules satisfy the fundamental requirements of fairness"); *Koolstra v. Sullivan*, 744 F. Supp. 243, 248 (D. Colo. 1990) (noting generally that due

process in agency actions requires fundamental fairness); *Home Box Office, Inc. v. F.C.C.*, 567 F.2d 9, 15 (D.C. Cir. 1977) (noting the "fundamental notions of fairness implicit in due process").

Here, the CDPHE is a state administrative agency charged under the Colorado Water Quality Control Act, C.R.S. §§ 25-8-101 *et seq.*, with creating and enforcing the MS4 permit program. An enforcement agency knows that it is likely to bring litigation to enforce its permit—that much is obvious in the enforcement sections of its organic Act—and that such an action involves a property interest of the permittee, namely money.

Under the MS4 permit program and the permit, the CDPHE requires submission of City programs for evaluation and approval. An important part of that evaluation and approval includes CDPHE internal and external discussions about whether City approaches satisfy the MS4 permit. *See* Deposition Transcript Excerpts of Nathan Moore, attached as Exhibit 7, at 19:6-21:12, 120:1-16. The CDPHE kept records of these discussions, like any organization. They are internal memoranda, notes, emails, and the like. *See, e.g. id.* at 185:20-186:4. The CDPHE was a regulatory agency and an enforcement agency while its internal debates occurred and were recorded. It had to know at that time that it reasonably might sue the City asserting a City violation of the program it was then evaluating and approving. The CDPHE's knowledge at that time would be important to a later enforcement action. The State knew these same things when it decided to destroy these important records.

As a matter of constitutional fairness, due process demands that the State retain its written record of what it has approved—the decision it has made about the content and substance and rationale for its approval decision. It is the CDPHE's enforcement power, the power to take money from the City and to force it to act, that gives rise to the obligation to be fair in this way.

The CDPHE cannot choose to later bring an enforcement action and argue against its previous decisions—like it is doing here. It is the CDPHE's records that hold it honest and fair in this regard, but the CDPHE has chosen to destroy those records. The State has therefore breached its duty of fairness owed to the City.

B. The State Acted Negligently In Destroying Relevant Internal Communications Pursuant to an Unreasonable Records Retention Policy.

"Once it is established that a party's duty to preserve has been triggered, the inquiry into whether a party has honored its obligation to preserve evidence turns on reasonableness, which must be considered in the context of whether 'what was done–or not done–was proportional to that case and consistent with clearly established applicable standards.'" *Zbylski*, 154 F. Supp. 3d at 1164 (quoting *Rimkus Consulting Grp., Inc. v. Cammarata*, 688 F. Supp. 2d 598, 613 (S.D. Tex. 2010)).

The City does not claim that the State's intentional destruction of documents relevant to this particular litigation was accompanied by bad intent. Rather, the State contends that the State should have reasonably known that in any future enforcement of the permits, such documents would be relevant, but it nevertheless adopted and implemented a retention policy that allowed the destruction of these relevant and important documents. This seriously flawed policy denies permittees the ability to use such documents in their defense. In the case of the City, based upon its asserted defenses, the policy has left the City in a fundamentally unfair position, and one in which it cannot defend itself fully. Specifically, "CDPHE Policy 2.15[] mandate[s] the regular destruction of internal correspondence and working documents" if not specifically archived by an employee within 60-90 days. Letter from M. Parish to R. Kaufman dated August 24, 2017,

attached as Exhibit 8, at 5; CDPHE Policy 2.15, attached as Exhibit 9;[4] Ex. 4 at 42:6-43:2, 45:15-23 (stating that emails are not retained unless segregated and saved elsewhere); Ex. 3. at pp. 13-14 ¶ 15. For the reasons stated above, the State acted negligently in implementing a policy that not only permitted, but *mandated*, the destruction of internal correspondence for which the State knew or should have known would be relevant to future enforcement litigation.

The State testified that a purpose for destroying records was to minimize storage space. Ex. 4 at 13:22-14:3. It is an entirely unreasonable justification for a government acting in an enforcement capacity to destroy enforcement records in order to minimize space.

That the State was acting pursuant to a routine retention/destruction policy does not absolve it from its duties as an enforcement entity. *Gerlich v. U.S. Dep't of Justice*, 711 F.3d 161, 170 (D.C. Cir. 2013) ("The fact that the records were destroyed as part of the defendant's typical practice was insufficient to overcome the duty to preserve them.") (internal quotation marks and citation omitted); *Phillip M. Adams & Assocs., L.L.C. v. Dell, Inc.*, 621 F. Supp. 2d 1173, 1193 (D. Utah 2009) ("A court–and more importantly, a litigant–is not required to simply accept whatever information management practices a party may have. A practice may be unreasonable, given responsibilities to third parties."); *id.* at 1193-94 ("An organization should have reasonable policies and procedures for managing its information and records.") (quotation omitted); *id.* at 1194 ("'The absence of a coherent document retention policy' is a pertinent factor to consider when evaluating sanctions.") (quoting *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 123 (S.D. Fla. 1987)); *id.* at 1194 ("[I]t is clear that ASUS' lack of a retention

[4] CDPHE Policy 2.15 was modified a number of times starting in 2006, when emails would be deleted within 60 days, to 2016, when the policy was changed to auto-deletion after 90 days. Ex. 8 at p. 4.

policy and irresponsible data retention practices are responsible for the loss of significant data."); *Bass-Davis v. Davis*, 122 Nev. 442, 452, 134 P.3d 103, 109 (2006) (affirming the sanctions awarded in *Reingold v. Wet 'N Wild Nevada, Inc.*, 113 Nev. 967, 944 P.2d 800 (1997) *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) and finding the defendant negligently destroyed records pursuant to a routine records destruction policy, since "the prospect of litigation was reasonably foreseeable").[5] Therefore, the State's unreasonable policy to destroy documents was negligent.

C. The City is Prejudiced Significantly in this Enforcement Action by the State's Destruction of Important Documents.

"When considering whether the [destruction of documents] was prejudicial, a court must first determine whether the evidence would be relevant to an issue at trial." *Giblin v. Sliemers*, 147 F. Supp. 3d 1207, 1215 (D. Colo. 2015) (internal quotation marks and citation omitted). Here, the City has been prejudiced by its inability to fully defend itself on a number of issues.

First, the "residential waiver" is one of the issues selected by the Court for the first trial. Scheduling Order at 2 [Doc. 58]. On March 1, 2010, the City sent a letter to the State and expressly highlighted changes to the City's Subdivision Policy Manual that are important to the City's defense in this case. Letter from C. McNair to N. Moore dated March 1, 2010, attached as Exhibit 10. The City explained its policy for application of the residential waiver. *Id.* The State was the administrator of the MS4 permit, and it requested this letter in the first place. Exhibit 11 includes an email from Lisa Knerr at the CDPHE requesting to see the Subdivision Policy Manual changes in the form of a request for modification in accordance with Part I.C.3 of the

[5] *Reingold* was overruled to the extent the court had found the destruction of records to be "willful" and instead found that the destroying party was "negligent," but nonetheless affirmed the award of sanctions for destruction of documents. *Bass-Davis*, 122 Nev. at 452.

permit. In any event, the State's understanding of the City's policy to apply the residential waiver is a key defense issue in this case.

The important point here is that the State destroyed all its internal and external records evaluating the State's approval of the Subdivision Policy Manual, including the section of that manual explaining use of the residential waiver in the way the State now challenges. The State knew how the City applied its residential waiver because the City explained it clearly in writing. The State must have discussed and evaluated that approach internally and perhaps externally. Yet the State has deprived the City of access to any records that verify this understanding.

In addition, the State undertook extensive audits of parts of the City's MS4 program relative to this case in 2004, 2009, 2013, and 2015. Am. Compl. ¶¶ 32-42; Ex. 3 at p. 8. But the State has produced only a single document concerning evaluation and review of these audits, Ex. 5, which consists of Nathan Moore's comments to the EPA's 2004 audit of the City's MS4 permit. Of particular importance to the City's defense here, the State audited the City's construction sites program in 2009, *see* Ex. 3 at p. 4, but has produced no relevant internal or external communications.

The City is entitled to the records described in order to show that the State and other Plaintiffs are claiming violations before this Court that result from City activities the State had earlier approved. The City's defense in this case is prejudiced significantly by the State's intentional destruction of its records.

D. The State Should Be Sanctioned For Its Failure to Preserve Relevant Evidence

The available remedies for destruction of relevant documents depend "on the culpability of the responsible party," *Estate of Trentadue v. United States*, 397 F.3d 840, 862 (10th Cir.

2005), and may include "an inference that production of the document would have been unfavorable to the party responsible for its destruction,'" *E.E.O.C. v. Dillon Cos., Inc.*, 839 F. Supp. 2d 1141, 1144 (D. Colo. 2011) (quoting *Aramburu v. Boeing Co.*, 112 F.3d 1398, 1407 (10th Cir. 1997)). Moreover, sanctions are appropriate where the party negligently destroyed documents "so long as the party seeking sanctions can show it suffered prejudice and the other side was on notice that the evidence should be preserved." *Browder*, 209 F. Supp. at 1244; *103 Inv'rs I, L.P. v. Square D Co.*, 470 F.3d 985, 988 (10th Cir. 2006).

Here, the State is culpable because it intentionally chose to destroy the only records available that would enable an enforcement defendant, the City, to defend itself, from the State acting as an enforcement agency. As described, the City has been prejudiced significantly by the State's destruction of records, because the City in now unable to use those records to defend itself using the State's own words. It is fundamentally unfair for the State to destroy these documents and then bring an enforcement action.

Accordingly, when the State's interpretation of City compliance with an aspect of its MS4 permit is at issue, and the City can show it is colorable to infer that the State had approved earlier what the State now challenges, the City requests that the Court accept that inference against the State. That inference will then bind the other Plaintiffs in this case, as well. This relief is reasonable and appropriate in light of the City's hindrance in proving its defenses due to the State's destruction of its records.

IV. CONCLUSION

For the reasons stated above, the City asks the Court to sanction the State of Colorado for its intentional destruction of records important to the City's defense in this enforcement action.

Dated this 12th day of February, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2018, a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SANCTIONS AGAINST THE STATE OF COLORADO FOR DESTRUCTION OF DOCUMENTS** was filed with the Clerk of Court using the CM/ECF system which will send notification of the filing to the following email addresses:

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